



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee solicits comment on the following proposal by October 1, 2016. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes an instruction for violations of MCL 333.7401a, delivery of a controlled substance or gamma-butyrolactone (date-rape drugs). The instruction, M Crim JI 12.2b, is entirely new.

[NEW] M Crim JI 12.2b Unlawful Delivery of Controlled Substance or Gamma-butyrolactone to Commit Criminal Sexual Conduct

(1) The defendant is charged with the crime of delivering [a controlled substance / gamma-butyrolactone] with intent to commit criminal sexual conduct. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant delivered [a controlled substance / gamma-butyrolactone] or a mixture or compound containing [a controlled substance / gamma-butyrolactone] to [*name complainant*] or caused [a controlled substance / gamma-butyrolactone] to be delivered to [him / her]. “Delivery” means that the defendant intentionally transferred or attempted to transfer the substance to another person, or caused that substance to be delivered to another person.

(3) Second, that the defendant knew [he / she] was delivering [a controlled substance / gamma-butyrolactone] or a mixture or compound containing [a controlled substance / gamma-butyrolactone] to [*name complainant*].

(4) Third, that [*name complainant*] did not consent to have [a controlled substance / gamma-butyrolactone] delivered to [him / her].

(5) Fourth, that when the defendant delivered the substance or caused it to be delivered to [*name complainant*], the defendant intended to assault [*name complainant*] with the intent to sexually penetrate [him / her], with the intent to have sexual contact with [him/her], or with the intent to attempt an act of criminal sexual

contact or penetration against [*name complainant*], as I [have described / will describe] [that offense / those offenses] to you.¹

Use Note

¹ Generally, the charge of delivering a controlled substance or gamma-butyrolactone under MCL 333.7401a will accompany a criminal sexual conduct charge or charges, so providing the elements of that charge or those charges will be sufficient to satisfy this element. However, the language of this element may have to be modified in instances where an independent count of criminal sexual conduct has not been charged, and the court may have to provide the elements of one or more criminal sexual conduct offenses.